

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID LEFKOWITH

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Appeal 2007-2312  
Application 09/681,815  
Technology Center 3600

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Decided: October 29, 2007

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Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and  
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-23. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

This appeal arises from the Examiner's Final Rejection, mailed February 17, 2006. Appellant filed an Appeal Brief in support of the appeal on July 17, 2006 and filed a "revised Argument section" (Rvds Arg.) to the Brief on August 24,

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2006. An Examiner's Answer to the Appeal Brief was mailed on October 19, 2006.

## SUMMARY OF DECISION

We AFFIRM.

### THE INVENTION

Appellant claims a method and system for providing rebates to automobile owners which is said to woo new car buyers to purchase a new car from them.

(Specification 1: [0001])

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for providing rebates to automobile owners based on purchases made at participating retailer locations, the method comprising:

providing an automobile to a customer wherein the automobile has been acquired by the customer;

providing the customer with a customer identification badge containing a plurality of customer information;

electrically receiving the customer information stored within the customer identification badge at a point of sale computer; electrically transmitting point of sale purchase information and the customer information over a computer network to a computer at a rebate processing center remote from the point of sale computer; and

providing a rebate to the customer wherein the rebate is calculated based on the purchase information, and wherein the customer identification badge expires after a pre-determined time

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interval if the customer does not verify that he or she continues to possess the automobile.

### THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Schilling	5,359,182	Oct. 25, 1994
Kanter	5,537,314	Jul. 16, 1996
Ovadia	5,612,527	Mar. 18, 1997
Bricaud	6,149,466	Nov.21, 2000
DeWolf	2002/0032626A1	Mar. 14, 2002

The following rejections are before us for review.

1. Claim 1-3, 6-10, 13-15, and 18-21 are rejected under 35 U.S. § 103(a) as being unpatentable over Kanter in view of DeWolf.
2. Claims 11, 12, 22, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanter in view of DeWolf in view of Schilling.
3. Claims 4 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanter in view of DeWolf in view of Ovadia.
4. Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanter in view of DeWolf in view of Bricaud.

### ISSUE

The issue before us is whether Appellant has sustained its burden of showing that the Examiner erred in rejecting the claims on appeal as being unpatentable under 35 U.S.C. § 103(a) over Kanter in view of DeWolf. More specifically,

Appellant argues that the prior art fails to teach a customer identification badge that expires after a predetermined time interval if the customer does not verify that he or she continues to possess the automobile (Rvsd Arg., 2), and that Kanter and DeWolf each fail to teach, disclose, or suggest updating the customer identification badge to reflect that the customer continues to possess the automobile (Rvsd Argument., 3, 4).

### FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Kanter discloses a “participant's account number is a unique account number of the participant, such as the participant's social security number, and is encoded in a magnetic stripe or similar on a plastic card...” (Kanter, col., 17, ll. 54-57) and this customer identification badge is used as part of a referral recognition system in an incentive program offered by merchants (Kanter, col. 12, ll. 49-54).

2. DeWolf discloses an asset information registry which can be applied to vehicles and record maintenance (DeWolf p.10, [0107]) which we find to be an incentive for the sale of the vehicle like the referral recognition system (FF 1) is to Kanter.

3. The Examiner found that:

DeWolf discloses that an asset record of what the user owns can be maintained at time of transaction via a smart card:

"[0109] In one embodiment, the vehicle asset record is transferred from the manufacturer or dealer to the buyer

or other party. The transfer of the asset record can be done in numerous ways. In one embodiment, the asset record is transferred via a digital medium, such as, floppy disk, zip disk, tape drive, CD, DVD, smart card, etc. In a preferred embodiment, the asset record is transferred over a computer network, such as the Internet. Using the Internet allows the manufacturer or dealer to make the vehicle asset record available to customers or other interested parties even if they are remotely located".

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4. DeWolf discloses as part of its Background of the Invention "a need still exists for an efficient method for asset and information management where data is not lost after a transfer of ownership" (DeWolf p.1, [0007] ) which emphasizes the importance the system places on the need to keep the ownership status updated.

5. DeWolf discloses that (1) the "Global Asset Information Registry (GAIR) is maintained and accessed by the asset owners and by any combination of organizations and individuals having a relationship to these assets" (DeWolf p.1, [0011]); and (2) "the owner 116 may receive data about the asset or update data related to the asset" (DeWolf p.3, [0039]) which we interpret as meaning that the owners have access to the GAIR and can update it with changes, such as in ownership status.

6. DeWolf discloses that the GAIR service "could be offered for a specific time period..." (DeWolf p.11, [0114]) which we read as being a predetermined time interval.

7. DeWolf discloses “[t]ransactions, regarding the exchange of ownership rights, for example, would be incorporated into the system. Exchanges of objects would then have an audit-able trail that would relate to ownership over time” (DeWolf p.8, [0090]). The tracking of exchange of ownership rights can be applied to the sale of a vehicle (DeWolf p.10, [0101]).

8. DeWolf discloses that “the creator or owner of the initial vehicle asset record, the manufacturer, would grant various access privileges to particular asset records to various individuals and organizations depending on their ownership status...” (DeWolf [0110]).

#### PRINCIPLES OF LAW

Under 35 U.S.C. § 103, a claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14, 148 USPQ 459, 466 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: “[ (1) ] the scope and content of the prior art are to be determined; [ (2) ] differences between the prior art and the claims at issue are to be ascertained; and [ (3) ] the level of ordinary skill in the pertinent art resolved.” 383 U.S. at 17, 148 USPQ at 467. *See also KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391.

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* and *Anderson's-Black Rock* are illustrative-a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

*KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396.

#### ANALYSIS

We affirm the rejection of claims 1-23 under 35 U.S.C. § 103(a). Appellant does not provide a substantive argument as to the separate patentability of claims 3-12, and 15-23 that depend from claims 1 and 13, respectively, which are the sole independent claims for each group. Since Appellant argues independent claims 1 and 13 as a group, we address only claim 1 as representative of the independent claims and, for the reasons that follow, we affirm the rejection of claims 1 and 13. We also affirm the rejections of dependent claims 3-12, and 15-23 since Appellant has not challenged such with any reasonable specificity (*See In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)). Also, Appellant argues the separate patentability of dependent claims 2 and 14, and we affirm the rejection of these claim for the reasons as set forth *infra*.

Appellant argues “Kanter and DeWolf each fail to teach, disclose, or suggest a customer identification badge that expires after a predetermined time interval if the customer does not verify that he or she continues to possess the automobile, as each of independent claims 1 and 13 recite.” (Rvsd Argument., 2) We disagree.

We begin by noting that Appellant does not argue that the combination of Kanter and DeWolf made under 35 U.S.C. § 103(a) is improper, but rather that each reference fails to teach the claimed feature of the customer identification badge expiring as forth, *supra*. We thus address the 35 U.S.C. § 103(a) rejection in the context of whether this limitation is found in one of Kanter and DeWolf.

We find that DeWolf does disclose a customer badge that expires after a predetermined time interval if the customer does not verify that he or she continues to possess the automobile as required by the claims. First, in DeWolf, a smart card can be used to transfer a record of an asset owned by a holder of the card (FF 3), and thus the smart card is a customer identification badge. Appellant does not challenge this point. (Rvsd Argument., 3)

Second, we find that in DeWolf, the registry service associated with the smart card may be set to expire after a predetermined period lapses (FF 6). In addition, in DeWolf, the smart card, via the registry system with which it is associated, does effectively expire if the customer does not verify that he or she continues to possess the automobile as required by the claims. This is because: (1) the smart card in DeWolf is tied to a predetermined time interval (FF 6), and (2) the access privileges in the smart card are also tied to ownership (FF 8). Thus, if the user has access to the system, then he/she must be the present owner of the



asset (FF 8) and, at that point in time of use, the predetermined time period could not have elapsed. Common sense tells us that once the user updates the record to change the ownership to another, then privileges tied to that user will expire. *See KSR*, 127 S. Ct. at 1742, 82 USPQ2d at 1397. As Kanter's badge is tied to a specific user uniquely (FF1), privileges tied to that badge or card would logically expire upon change of ownership. Whether the loss of privileges occurs because no update is made by the user before time expires, as claimed, or occurs because the user has affirmatively inputted an updated change of ownership causing the period to expire as of the time of the update, is not seen to be a patentable difference. In either case, the predetermined time period expires as the result of a change of ownership caused by some required action of the user.

Regarding claims 2 and 14, Appellant argues Kanter and DeWolf fail to contemplate "updating an ownership attribute associated with the vehicle asset record." (Rvsd Arg., 4) We disagree. DeWolf discloses a system which involves: (1) "[t]ransactions, regarding the exchange of ownership rights" (FF 7), and (2) that the owner 116 may update data about the asset (FF 5). Thus, the requirements of claims 2 and 14 are met by at least these items in DeWolf. We therefore sustain the rejection of claims 2 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Kanter in view of DeWolf.

#### CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-23 under 35 U.S.C. § 103(a) as unpatentable over Kanter and DeWolf.

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DECISION

The decision of the Examiner to reject claims 1-23 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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